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Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7676 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Radio Corporation of America

Subpart—Bribing Customers' Employees: § 13.315 *Employees of private concerns.*

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Radio Corporation of America, New York, N.Y., Docket 7676, December 15, 1959]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging one of the nation's major record manufacturers with giving concealed "payola"—sums of money or other valuable consideration—to television and radio disc jockeys or anyone else to induce them to play its recordings.

After acceptance of an agreement providing for entry of a consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 15 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Radio Corporation of America, a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondent has a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondent has a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public, at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondent, Radio Corporation of America, shall, within sixty (60) days after service upon it of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the aforesaid initial decision, as modified.

Issued: December 15, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-866; Filed, Jan. 28, 1960; 8:46 a.m.]

[Docket 7564 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

J. B. Tenzer Hosiery Co.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.1845-80 Wool Products Labeling Act; § 13.1852 *Formal regulatory and*

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FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

statutory requirements: 13.1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68–68(c)) [Cease and desist order, Jacob B. Tenzer et al. trading as J. B. Tenzer Hosiery Company, New York, N.Y., Docket 7564, Dec. 17, 1959]

In the Matter of Jacob B. Tenzer and Jesse A. Tenzer, Individually and as Co-Partners Trading as J. B. Tenzer Hosiery Company

This proceeding was heard by a hearing examiner on the complaint of the Commission charging New York City distributors with violating the Wool Products Labeling Act by labeling as "100 percent wool sole cushioning", men's hosiery, the soles of which contained a substantial quantity of other than wool fibers, and by failing in other respects to comply with labeling requirements.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 17 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondents Jacob B. Tenzer and Jesse A. Tenzer, individually and as co-partners trading as J. B. Tenzer Hosiery Company, or under any other name or names, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of men's hosiery or other wool products, do forthwith cease and desist from:

1. Misbranding such products by falsely and deceptively stamping, tagging or labeling or otherwise falsely identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to or place on each product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentages of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one of more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in

commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Misbranding wool products by failing to set forth on stamps, tags, labels or other means of identification attached to such products the information required under section 4(a)(2)(A) of the Wool Products Labeling Act with respect to each specifically designated section of a wool product composed of two or more sections where such sections are of a different fiber composition and are recognizably distinct.

4. Falsely or deceptively designating the character or amount of the fibers contained in any section of a wool product composed of two or more sections which are recognizably distinct in violation of Rule 23 of the rules and regulations promulgated pursuant to the Wool Products Labeling Act of 1939.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: December 17, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-867; Filed, Jan. 28, 1960; 8:46 a.m.]

[Docket 7547 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Towne & Country Color Photographers of Texas

Subpart—Delaying or withholding corrections, adjustments or action owed: § 13.675 *Delaying or withholding corrections, adjustments or action owed.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1715 *Quality;* § 13.1735 *Sample, offer, or order conformance;* § 13.1760 *Terms and conditions.*

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C 45) [Cease and desist order, Leo Coff doing business as Towne & Country Color Photographers of Texas, Dallas, Tex., Docket 7547, December 17, 1959]

In the Matter of Leo Coff, an Individual Doing Business as Towne & Country Color Photographers of Texas

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a Dallas, Tex., photographer, selling color photographs through door-to-door solicitors, with misrepresenting the quality of his finished photographs and the time for sittings and showing of proofs, and with claiming falsely that he would promptly deliver photographs purchased.

After aceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 17 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Leo Coff, an individual doing business as Towne & Country Color Photographers of Texas, or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That the respondent will take photographs at a designated time or on a specified date, or that proofs of photographs will be shown to the customer by a specified date or within a short time after the sitting; or within any other period of time, that is not in accordance with the fact;

(b) That respondent will promptly deliver photographs purchased;

(c) That respondent will furnish photographs of the same quality as sample photographs or color transparencies viewed by purchasers.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: December 17, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-868; Filed, Jan. 28, 1960; 8:46 a.m.]

Title 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

[Amdt. 1]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations of the 1961 and Succeeding Crop Years

Correction

In F.R. Doc. 60-540, appearing at page 427 of the issue for Wednesday, January 20, 1960, the following corrections should be made:

1. In paragraph D of the application form appearing in § 401.3(e), the phrase "(other than combined crop insurance" should be closed by a parenthesis, thus: "(other than combined crop insurance)".

2. In § 401.3(f), the comma after the phrase "provided under paragraph (e)" should be deleted; and a comma should be inserted after the phrase "of this section".

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 955—GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIF., AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

[Grapefruit Reg. 129]

Limitation of Shipments

§ 955.390 **Grapefruit Regulation 129.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 55, as amended (7 CFR Part 955), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of White Water, California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Administrative Committee (established under the aforesaid amended marketing agreement and order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an open meeting on January 21, 1960, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid, and this regulation, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective on the date hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., January 31, 1960, and ending at 12:01 a.m., P.s.t.,

March 13, 1960, no handler shall handle:

(i) Any grapefruit of any variety grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of White Water, California, unless such grapefruit grade at least U.S. No. 2; or

(ii) From the State of California or the State of Arizona to any point outside thereof in the United States, any grapefruit, grown as aforesaid, which measure less than 3 9/16 inches in diameter, except that a tolerance of 5 percent, by count, of grapefruit smaller than the foregoing minimum size shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the revised United States Standards for Grapefruit (California and Arizona), 7 CFR 51.925–51.955: *Provided,* That, in determining the percentage of grapefruit in any lot which are smaller than 3 9/16 inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size 3 13/16 inches in diameter and smaller.

(2) As used herein, "handler," "variety," "grapefruit," and "handle" shall have the same meaning as when used in said amended marketing agreement and order; the term "U.S. No. 2" shall each have the same meaning as when used in the aforesaid revised United States Standards for Grapefruit; and "diameter" shall mean the greatest dimension measured at right angles to a straight line from the stem to blossom end of the fruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 26, 1960.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-878; Filed, Jan. 28, 1960; 8:48 a.m.]

PART 970—IRISH POTATOES GROWN IN MAINE

Approval of Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 122 and Order No. 70 (7 CFR Part 970), regulating the handling of Irish potatoes grown in the State of Maine, was published in the FEDERAL REGISTER January 5, 1960 (25 F.R. 59). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which proposals were adopted and submitted for approval by the Maine Potato Administrative Committe established pursuant to said marketing agreement and order, it is hereby found and determined that:

§ 970.207 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the Maine Potato Administrative Committee, established pursuant to Marketing Agreement No. 122 and this part, to enable such committee to perform its functions pursuant to the provisions of aforesaid marketing agreement and order, during the fiscal period ending August 31, 1960, will amount to $58,375.00.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 122 and this part, shall be $1.25 per railroad car, $1.25 per truckload of 36,000 pounds or more, 80 cents per truckload of not less than 25,000 pounds, up to, but not including 36,000 pounds, and 50 cents per truckload of less than 25,000 pounds, or the respective equivalent quantities, of potatoes handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 122 and this part.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 26, 1960, to become effective 30 days after publication in the FEDERAL REGISTER.

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-879; Filed, Jan. 28, 1960; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 256; Amdt. 94]

PART 507—AIRWORTHINESS DIRECTIVES

Fairchild F–27 Aircraft

Investigation of several cases of loose rivets in the rudder and elevator tension regulator assembly of Fairchild F–27 aircraft has shown that the "Cherry" rivets work loose, creating an unsafe condition. Since safety is affected by this type of failure which will result in loss of the elevator control, it is necessary to require replacement of the "Cherry" rivets with bolts.

In the interest of safety the Administrator finds that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing § 507.10(a), (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

FAIRCHILD. Applies to Model F–27, F–27A, and F–27B, Serial Numbers 1 to 64 inclusive.

Compliance required by February 15, 1960.

As a result of investigation of loose rivets in the rudder and elevator tension regulator assembly, P/N 0501101–0 or 0501101–1, the following must be accomplished:

Replace "Cherry" rivets attaching the elevator bellcrank to tension regulator assembly with bolts, P/N 27–720003–9.

Assemblies already modified by replacing the "Cherry" rivets with AN 470DD rivets are acceptable. However, further use of AN 470DD rivets in this assembly is prohibited due to the difficulty of installing these rivets without seriously damaging the bellcrank. If AN 470DD rivets are replaced or removed, they shall be replaced with bolt, P/N 27–720003–9.

(Fairchild Service Bulletin No. 27–16, revised September 8, 1959, covers this subject.)

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on January 25, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-860; Filed, Jan. 28, 1960; 8:45 a.m.]

[Reg. Docket No. 255; Amdt. 93]

PART 507—AIRWORTHINESS DIRECTIVES

Martin 202, 202A, and 404 Aircraft

Airworthiness directive 59–20–3 (24 F.R. 8092) requires continuing inspection for cracks in the wing spar cap flanges of Martin 202, 202A and 404 aircraft until a permanent fix is incorporated. However, this directive did not provide a permanent fix. A repair and reinforcement approved by the Administrator has now been developed for Model 404 aircraft. Accordingly, AD 59–20–3 is revised to incorporate this provision.

Since this amendment grants relief by providing an alternative means of compliance with the directive which would eliminate the need for the special inspections for Model 404 aircraft, and delay in granting such relief would impose a hardship, the Administrator for good cause finds that notice and public procedure hereon would be contrary to the public interest and may be omitted and that this amendment may be made effective immediately.

In consideration of the foregoing § 507.10(a) is amended as follows:

59–20–3 MARTIN as it appeared in 24 F.R. 8092 is revised by adding the following paragraph:

The rework detailed in Eastern Airlines Drawing No. 404–5098 is acceptable for repairing or reinforcing Model 404 aircraft.

This amendment shall become effective immediately.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on January 25, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-861; Filed, Jan. 28, 1960; 8:45 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-WA-8; Amdt. 72]

PART 608—RESTRICTED AREAS

Modification

The purpose of this amendment to § 608.52 of the regulations of the Administrator is to divide the Wendover, Utah, Restricted Area (R–259) (Salt Lake City and Elko Charts) into a north area (R–259A) and a south area (R–259); designate the northern portion as "continuous" for time of use; designate the southern portion as "sunrise to sunset" for time of use, and to change the name and the controlling agency of the Wendover (Dugway), Utah, Restricted Area (R–273) (Salt Lake City Chart).

A Notice of Proposed Rule-Making was published in the FEDERAL REGISTER on November 11, 1959 (24 F.R. 9216) as Airspace Docket No. 59–WA–386, stating that according to data available, there did not appear to be sufficient justification to warrant the continued designation of Restricted Area R–273 and that the Federal Aviation Agency proposed to revoke the area.

Restricted Area (R–273) is an area of approximately 635 square miles in the western part of the State of Utah, designated from the surface to 40,000 feet, time of use is unlimited and it is wholly contained within Restricted Area R–259 which is designated from the surface to 60,000 feet, time of use, sunrise to sunset. Section 608.52 (23 F.R. 8588) designates the Department of Air Force's 617th Air Force Base Unit, Dugway Proving Ground, Tooele, Utah, as the controlling agency for Restricted Area (R–273). However, the Air Force Base Unit authorized the Army Dugway Proving Ground to conduct certain chemical, biological, and radiological tests in R–273. As a practical matter, the Army's Dugway Proving Ground became the controlling agency for R–273. With the expansion of the Department of the Army's Research and Development program, it was discovered that it was unable to contain its testing program within the confines of R–273. The Army executed an agreement with the Commander of Hill AFB, Utah, which is the controlling agency for Restricted Area (R–259), whereby it was authorized to conduct tests within the northern portion of Restricted Area (R–259). The additional airspace was ample for the Department of the Army to conduct its tests. However, in December 1959, the Army determined that the time limitations in effect for Restricted Area R–259 were too limiting for the needs of the Army testing program conducted in Restricted Area R–259, and the tests were therefore terminated.

In response to the Notice of Proposed Rule-Making to revoke R–273, the Department of the Army submitted classified information describing in detail the nature of the activities conducted in R–273 and R–259. Dugway Proving Ground (Restricted Area R–273) is the only Army installation within the continental United States at which field testing of chemical, biological and radiological (CBR) agents is conducted for all the Armed Forces of the United States. Activities carried on at Dugway Proving Ground include the release and study of various CBR agents; functioning of various munitions designed to deliver those agents, testing of explosive projectiles used by a modern Army, destruction of obsolete high explosive and CBR munitions and scientific studies of radiological contamination. In addition, the Army indicated that it is necessary in the interest of national defense that a large percentage of these testing programs be conducted during hours of darkness. Furthermore, some of the testing programs are completely dependent upon the existence of meteorological conditions incurred only during the winter months. Thus, the time limitation presently established for R–259 has seriously curtailed vital testing activities assigned to the Dugway Proving Ground, and has thus endangered the national defense effort. In view of the above, the Army submitted a proposal to the Federal Aviation Agency requesting an expansion of Restricted Area (R–273) and redesignation of the time of use of the portion of Restricted Area (R–259) north of latitude 39°55'00" from "sunrise to sunset" to "continuous."

The Department of the Air Force also submitted comments in response to the proposed revocation of Restricted Area (R–273) substantiating the need for R–259 for both Army and Air Force use. It also requested the time of use for Restricted Area (R–259) be changed from "sunrise to sunset" to "continuous." The Air Force proposes to use R–259 for nighttime Guided Air Rocket (GAR) firing from high speed Century series type aircraft.

Comments were received from local civil interests requesting the revocation of the Restricted Areas in the State of Utah. The Federal Aviation Agency is conducting a continuing study of restricted areas and in connection therewith, will closely examine the justification for continued retention of all restricted areas in the State of Utah, including Restricted Area (R–259A) north and (R–259) south. When this study is completed, appropriate action will be taken.

In view of the comments received, it was decided to withdraw the Notice of Proposed Rule-Making published as Airspace Docket 59–WA–386. This action is being accomplished in a separate document.

In view of the foregoing, it has been determined that a situation exists requiring immediate action in the interest of national defense, and that compliance with the Notice and public procedure provisions of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest, and good cause exists for making these amendments effective on less than thirty days' notice.

In consideration of the foregoing, the following action is taken:

1. Section 608.52 *Utah* (23 F.R. 8588) is amended as follows:

(a) Wenover, Utah (R–259) (Salt Lake City and Elko Charts) is revoked.

(b) Wendover, Utah, Restricted Area (R–259) (Salt Lake City and Elko Charts) is added to read:

Description by Geographical Coordinates

Beginning at latitude 39°55'00" N., longitude 112°40'00" W.;
thence south to latitude 39°45'00" N., longitude 112°40'00" W.;
thence west to latitude 39°45'00" N., longitude 112°48'00" W.;
thence south to latitude 39°19'00" N., longitude 112°48'00" W.;
thence west to latitude 39°18'20" N., longitude 113°01'30" W.;
thence west to latitude 39°14'30" N., longitude 113°22'30" W.;
thence NW to latitude 39°20'40" N., longitude 113°37'30" W.;
thence SW to latitude 39°17'00" N., longitude 113°48'00" W.;
thence north to latitude 39°55'00" N., longitude 113°48'00" W.;
thence east to the point of beginning.

Designated altitudes. Surface to 60,000 feet.

Time of designation. Sunrise to sunset.

Controlling agency. Commander, Hill AFB, Utah.

(c) Wendover, Utah, Restricted Area (R–259A) (Salt Lake City and Elko Charts) is added to read:

Description by Geographical Coordinates

Beginning at latitude 40°40'30" N., longitude 113°00'00" W.;
thence south to latitude 40°25'00" N., longitude 113°00'00" W.;
thence east to latitude 40°25'00" N., longitude 112°53'00" W.;
thence south to latitude 40°20'00" N., longitude 112°53'00" W.;
thence east to latitude 40°20'00" N., longitude 112°40'00" W.;
thence south to latitude 39°55'00" N., longitude 112°40'00" W.;
thence west to latitude 39°55'00" N., longitude 113°48'00" W.;
thence north to latitude 40°00'00" N., longitude 113°48'00" W.;
thence west to latitude 40°00'00" N., longitude 114°00'00" W.;
thence north to latitude 40°20'00" N., longitude 114°00'00"W.;
thence west to latitude 40°20'00" N., longitude 114°08'00" W.;
thence north to latitude 40°26'00" N., longitude 114°08'00" W.;
thence east to latitude 40°26'00" N., longitude 114°00'00" W.;
thence north to latitude 40°38'30" N., longitude 114°00'00" W.;
thence east to the point of beginning.

Designated altitude. Surface to 60,000 feet MSL.

Time of designation. Unlimited.

Controlling agency. Commander, Hill AFB, Utah.

(d) In the Wendover (Dugway), Utah, Restricted Area (R–273) (Salt Lake City Chart) (23 F.R. 8588) delete the title "Wendover (Dugway, Utah (R–273) Salt Lake City Chart)" and substitute therefor "Dugway Proving Ground, Tooele, Utah (R–273) (Salt Lake City Chart).

In the text, under the section entitled Controlling agency, delete "617th AFB Unit, Dugway Proving Ground, Tooele, Utah." and substitute "Commanding Officer, Dugway Proving Ground, Tooele, Utah."

This amendment shall become effective 0001 e.s.t., February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 26, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60-881; Filed, Jan. 28, 1960; 8:48 a.m.]

Title 22—FOREIGN RELATIONS

Chapter II—International Cooperation Administration, Department of State

PART 201—PROCEDURES FOR FURNISHING ASSISTANCE TO COOPERATING COUNTRIES

Miscellaneous Amendments

ICA Regulation 1 is amended as follows:

1. Section 201.11 is revised to read as follows:

§ 201.11 Contract and delivery dates.

(a) *Compliance with dates under PA or PIO.* An importer must comply with the specified contract and delivery dates. A supplier must not accept orders identified by a PA or PIO number unless he expects to comply with the specified contract and delivery dates as notified to him by the importer.

(b) *Notification of contract information.* When the commodity being purchased is listed in § 201.21(d)(1)(i), the supplier shall, as soon as possible, but in no event more than 5 days after making a contract with the importer, send by first-class mail to the Procurement Analysis Branch, ICA, Washington, D.C., notification of such contract including the name of the supplier, the name of the importer, description of commodity, including quality and quantity to be sold, the purchase price, the date of the contract, the date of notification to ICA, the time of delivery under the contract, and the number of the applicable PA or PIO. A copy of the contract may be used to provide the notification if it contains all of the above information. The requirement of this paragraph shall not apply to contracts of less than $5,000.

§ 201.18 [Amendment]

2. In § 201.18 a new paragraph (e) is added to read as follows:

(e) *Notification of contract information.* When the commodity being purchased is listed in § 201.21(d)(1)(i), the supplier shall support his claim for reimbursement by furnishing a true copy of the notification given by him to ICA as required by § 201.11(b), together with his certification thereon, that he has sent the original thereof to ICA in accordance with the requirements of § 201.11(b).

(Sec. 525, 68 Stat. 856, as amended; 22 U.S.C. 1785)

Effective date. This amendment shall become effective February 10, 1960.

JAMES W. RIDDLEBERGER,
Director, International Cooperation Administration.

JANUARY 22, 1960.

[F.R. Doc. 60-871; Filed, Jan. 28, 1960; 8:47 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

NET OPERATING LOSS CARRYOVERS IN CERTAIN CORPORATE ACQUISITIONS

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381 (a), (b), and (c)(1) of the Internal Revenue Code of 1954, relating to net operating loss carryovers in certain corporate acquisitions:

CARRYOVERS

CARRYOVERS

§ 1.381(a) Statutory provisions; carryovers in certain corporate acquisitions; general rule.

SEC. 381. *Carryovers in certain corporate acquisitions*—(a) *General rule.* In the case of the acquisition of assets of a corporation by another corporation—

(1) In a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies, except in a case in which the basis of the assets distributed is determined under section 334(b)(2); or

(2) In a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c).

§ 1.381(a)-1 General rule relating to carryovers in certain corporate acquisitions.

(a) *Allowance of carryovers.* Section 381 provides that a corporation which acquires the assets of another corporation in certain liquidations and reorganizations shall succeed to, and take into account, as of the close of the date of distribution or transfer, the items described in section 381(c) of the distributor or transferor corporation. These items shall be taken into account by the acquiring corporation subject to the conditions and limitations specified in sections 381 and 382(b) and the regulations thereunder.

(b) *Determination of transactions and items to which section 381 applies*—(1) *Qualified transactions.* Except to the extent provided in section 381(c)(20), relating to the carryover of unused pension trust deductions in certain liquidations, the items described in section 381(c) are required by section 381 to be carried over to the acquiring corporation (as defined in subparagraph (2) of this paragraph) only in the following liquidations and reorganizations:

(i) The complete liquidation of a subsidiary corporation upon which no gain or loss is recognized in accordance with the provisions of section 332, but only if the basis of the assets distributed to the acquiring corporation is not required by

section 334(b)(2) to be the adjusted basis of the stock with respect to which the distribution is made;

(ii) A statutory merger or consolidation qualifying under section 368(a)(1)(A) to which section 361 applies;

(iii) A reorganization qualifying under section 368(a)(1)(C);

(iv) A reorganization qualifying under section 368(a)(1)(D) if the requirements of section 354(b)(1)(A) and (B) are satisfied; and

(v) A mere change in identity, form, or place of organization qualifying under section 368(a)(1)(F).

(2) *Acquiring corporation defined.* (i) Only a single corporation may be an acquiring corporation for purposes of section 381 and the regulations thereunder. The corporation which acquires the assets of its subsidiary corporation in a complete liquidation to which section 381(a)(1) applies is the acquiring corporation for purposes of section 381. Generally, in a transaction to which section 381(a)(2) applies, the acquiring corporation is that corporation which, pursuant to the plan of reorganization, ultimately acquires, directly or indirectly, all of the assets transferred by the transferor corporation. If, in a transaction qualifying under section 381(a)(2), no one corporation ultimately acquires all of the assets transferred by the transferor corporation, that corporation which directly acquires the assets so transferred shall be the acquiring corporation for purposes of section 381 and the regulations thereunder, even though such corporation ultimately retains none of the assets so transferred. Whether a corporation has acquired all of the assets transferred by the transferor corporation is a question of fact to be determined on the basis of all the facts and circumstances.

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). Y Corporation, a wholly-owned subsidiary of X Corporation, directly acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Y Corporation is the acquiring corporation for purposes of section 381.

Example (2). X Corporation acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Thereafter, pursuant to the plan of reorganization X Corporation transferred all the assets so acquired to Y Corporation, its wholly-owned subsidiary (see section 368(a)(2)(C)). Y Corporation is the acquiring corporation for purposes of section 381.

Example (3). X Corporation acquired all the assets of Z corporation solely in exchange for the voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Thereafter, pursuant to the plan of reorganization X Corporation transferred one-half of the assets so acquired to Y Corporation, its wholly-owned subsidiary, and retained the other half of such assets. X Corporation is the acquiring corporation for purposes of section 381.

Example (4). X Corporation acquired all the assets of Z Corporation solely in exchange for voting stock of X Corporation in a transaction qualifying under section 368(a)(1)(C). Thereafter, pursuant to the plan of reorganization X Corporation transferred one-half of the assets so acquired to Y Corporation, its wholly-owned subsidiary, and the other half of such assets to M Corporation, another wholly-owned subsidiary of X Corporation. X Corporation is the acquiring corporation for purposes of section 381.

(3) *Transactions and items not covered by section 381.* (i) Section 381 does not apply to partial liquidations, divisive reorganizations, or other transactions not described in subparagraph (1) of this paragraph. Moreover, section 381 does not apply to the carryover of an item or tax attribute not specified in subsection (c) thereof. No inference is to be drawn from the provisions of section 381 as to whether any item or tax attribute shall be taken into account by a successor corporation without regard to that section.

(ii) If, pursuant to the provisions of subparagraph (2) of this paragraph, a corporation is considered to be the acquiring corporation even though all or part of the acquired assets are transferred to a corporation or corporations controlled by the acquiring corporation, the carryover of any item described in section 381(c) to such controlled corporation or corporations shall be determined without regard to section 381. Thus, for example, if a parent corporation is the acquiring corporation for purposes of section 381 notwithstanding the fact that, pursuant to the plan of reorganization, it transferred to its wholly-owned subsidiary property acquired from the transferor corporation which the transferor corporation had elected to inventory under the last-in first-out method, then the question whether the subsidiary corporation shall continue to use the same method of inventorying with respect to that property shall be determined without regard to section 381.

(c) *Foreign corporations.* A foreign corporation may be a distributor, transferor, or acquiring corporation for purposes of section 381 if in accordance with § 1.367–1 it has been established to the satisfaction of the Commissioner that the distribution or exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. Thus, for example, the net operating loss carryovers of a foreign corporation, determined under the provisions of section 172 and subchapter N, chapter 1 of the Code, may be carried over to a domestic acquiring corporation if the domestic corporation acquires the assets of the foreign corporation in a liquidation or reorganization described in section 381(a) and the requirements of § 1.367–1 have been complied with.

(d) *Internal Revenue Code of 1939.* Any reference in the regulations under section 381 to any provision of the Internal Revenue Code of 1954 shall, where appropriate, be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1939.

§ 1.381(b) Statutory provisions; carryovers in certain corporate acquisitions; operating rules.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(b) *Operating Rules.* Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary or his delegate, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

§ 1.381(b)–1 Operating rules applicable to carryovers in certain corporate acquisitions.

(a) *Closing of taxable year*—(1) *In general.* Except in the case of a reorganization qualifying under section 368(a)(1)(F), the taxable year of the distributor or transferor corporation shall end with the close of the date of distribution or transfer.

(2) *Reorganizations under section 368(a)(1)(F).* In the case of a reorganization qualifying under section 368(a)(1)(F) (whether or not such reorganization also qualifies under any other provision of section 368(a)(1)), the acquiring corporation shall be treated (for purposes of section 381) just as the transferor corporation would have been treated if there had been no reorganization. Thus, the taxable year of the transferor corporation shall not end on the date of transfer merely because of the transfer; a net operating loss of the acquiring corporation for any taxable year ending after the date of transfer shall be carried back in accordance with section 172(b) in computing the taxable income of the transferor corporation for a taxable year ending before the date of transfer; and the tax attributes of the transferor corporation enumerated in section 381(c) shall be taken into account by the acquiring corporation as if there had been no reorganization.

(b) *Date of distribution or transfer.* (1) The date of distribution or transfer shall be that day on which are distributed or transferred all those properties of the distributor or transferor corporation which are to be distributed or transferred pursuant to a liquidation or reorganization described in paragraph (b)(1) of § 1.381(a)–1. If the distribution or transfer of all such properties is not made on one day, then, except as provided in subparagraph (2) of this paragraph, the date of distribution or transfer shall be that day on which the distribution or transfer of all such properties is completed.

(2) If the distributor or transferor and acquiring corporations file the statements described in subparagraph (3) of this paragraph, the date of distribution or transfer shall be that day as of which (i) substantially all of the properties to be distributed or transferred have been distributed or transferred, and (ii) the

distributor or transferor corporation has ceased all operations (other than liquidating activities). Such day also shall be the date of distribution or transfer if the completion of the distribution or transfer is unreasonably postponed beyond the date as of which substantially all the properties to be distributed or transferred have been distributed or transferred and the distributor or transferor corporation has ceased all operations other than liquidating activities. A corporation shall be considered to have distributed or transferred substantially all of its properties to be distributed or transferred even though it retains money or other property in a reasonable amount to pay outstanding debts or preserve the corporation's legal existence. A corporation shall be considered to have ceased all operations, other than liquidating activities, when it ceases to be a going concern and its activities are merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance of its money or other properties to its shareholders.

(3) The statements referred to in subparagraph (2) of this paragraph shall specify the day considered to be the date of distribution or transfer and shall specify, as of such date (i) the nature and amount of the total assets which were distributed or transferred and the dates so distributed or transferred, (ii) the nature and amount of the assets not distributed or transferred and the purpose for which they were retained, and (iii) the date on which the distributor or transferor corporation ceased all operations other than liquidating activities. Such statements shall be attached to the timely filed income tax return of the distributor or transferor corporation for its taxable year ending with such date of distribution or transfer and to the timely filed income tax return of the acquiring corporation for its first taxable year ending after such date, except that, with respect to any income tax return filed before the 90th day after publication of this Treasury decision in the FEDERAL REGISTER, any such statement shall be filed before such 90th day with the district director with whom such return is filed.

(c) *Return of distributor or transferor corporation.* The distributor or transferor corporation shall file an income tax return for the taxable year ending with the date of distribution or transfer described in paragraph (b) of this section. If the distributor or transferor corporation remains in existence after such date of distribution or transfer, it shall file an income tax return for the taxable year beginning on the day following the date of distribution or transfer and ending with the date on which the distributor or transferor corporation's taxable year would have ended if there had been no distribution or transfer.

(d) *Carryback of net operating losses.* For provisions relating to the carryback of net operating losses of the acquiring corporation, see paragraph (b) of § 1.381(c)(1)–1.

§ 1.381(c)(1) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; net operating loss carryovers.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

(1) *Net operating loss carryovers.* The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) Such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) The pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) The post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) The taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) The net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) The net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

§ 1.381(c)(1)–1 Net operating loss carryovers in certain corporate acquisitions.

(a) *Carryover requirement.* (1) Section 381(c)(1) requires the acquiring corporation to succeed to, and take into account, the net operating loss carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with any carryovers and carrybacks of the acquiring corporation for purposes of determining the taxable income of the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of section 172 in accordance with the conditions and limitations of section 381(c)(1) and this section.

(2) The net operating loss carryovers and carrybacks of the acquiring corporation determined as of the close of the date of distribution or transfer shall be computed without reference to any net operating loss of a distributor or transferor corporation. The net operating loss carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any net operating loss of the acquiring corporation.

(b) *Carryback of net operating losses.* A net operating loss of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall not be carried back in computing the taxable income of a distributor or transferor corporation. However, a net operating loss of the acquiring corporation for any such taxable year shall be carried back in accordance with section 172(b) in computing the taxable income of the acquiring corporation for a taxable year ending on or before the date of distribution or transfer. If a distributor or transferor corporation remains in existence after the date of distribution or transfer, a net operating loss sustained by it for any taxable year beginning after such date shall be carried back in accordance with section 172(b) in computing the taxable income of such corporation for a taxable year ending on or before that date, but may not be carried back or over in computing the taxable income of the acquiring corporation. This paragraph may be illustrated by the following examples:

Example (1). On December 31, 1954, X Corporation merged into Y Corporation in a statutory merger to which section 361 applies, and the charter of Y Corporation continued after the merger. Y Corporation sustained a net operating loss for the calendar year 1955. Y Corporation's net operating loss for 1955 may not be carried back in computing the taxable income of X Corporation but shall be carried back in computing the taxable income of Y Corporation.

Example (2). On December 31, 1954, X Corporation and Y Corporation transferred all their assets to Z Corporation in a statutory consolidation to which section 361 applies. Z Corporation sustained a net operating loss for the calendar year 1955. Z Corporation's net operating loss for 1955 may not be carried back in computing the taxable income of X Corporation or Y Corporation.

Example (3). On December 31, 1954, X Corporation ceased all operations (other than liquidating activities) and transferred substantially all its properties to Y Corporation in a reorganization qualifying under section 368(a)(1)(C). In the process of

liquidating its assets and winding up its affairs, X Corporation sustained a net operating loss for its taxable year beginning on January 1, 1955. This net operating loss of X Corporation shall be carried back in computing the taxable income of that corporation but may not be carried back or over in computing the taxable income of Y Corporation.

(c) *First taxable year to which carryovers apply.* (1) The net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This rule applies irrespective of whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year. Thus, such net operating loss carryovers shall first be used by the acquiring corporation with respect to the computation of its net operating loss deduction under section 172(a), and its taxable income determined under the provisions of section 172(b)(2), for such first taxable year. However, see paragraph (f) of this section.

(2) The net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation. Thus, if a parent corporation owning 80 percent of all classes of stock of its subsidiary corporation were to acquire its share of the assets of the subsidiary corporation upon a complete liquidation described in paragraph (b)(1)(i) of § 1.381(a)-1, then, subject to the conditions and limitations of this section, 100 percent of the net operating loss carryovers available to the subsidiary corporation as of the close of the date of distribution would be carried over to the parent corporation.

(d) *Limitation on net operating loss deduction for first taxable year ending after date of distribution or transfer.* (1) That part of the acquiring corporation's net operating loss deduction, determined in accordance with sections 172(a) and 381(c)(1), for its first taxable year ending after the date of distribution or transfer which is attributable to the net operating loss carryovers of the distributor or transferor corporation, is limited by section 381(c)(1)(B) and this paragraph to an amount equal to the acquiring corporation's postacquisition part year taxable income. Such postacquisition part year taxable income is the amount which bears the same ratio to the acquiring corporation's taxable income for the first taxable year ending after the date of distribution or transfer (determined under section 63 without regard to any net operating loss deduction but taking into account other items to which the acquiring corporation succeeds under section 381) as the number of days in such first taxable year which follow the date of distribution or transfer bears to the total number of days in such taxable year Thus, if the date of distribution or transfer is the last day of the acquiring corporation's taxable year, the net operating loss carryovers of the distributor or transferor are allowed in full in computing under section 172(a) the net operating loss deduction of the acquiring corporation for its first taxable year ending after that date. In such instance, the number of days in the first taxable year which follow the date of distribution or transfer is the total number of days in such taxable year.

(2) The limitation provided by section 381(c)(1)(B) applies solely for the purpose of computing the net operating loss deduction of the acquiring corporation under section 172(a) for the acquiring corporation's first taxable year ending after the date of distribution or transfer. The limitation does not apply for purposes of determining the portion of any net operating loss (whether of the distributor, transferor, or acquiring corporation) which may be carried to any taxable year of the acquiring corporation following its first taxable year ending after the date of distribution or transfer since such determination is made pursuant to section 172(b) and section 381(c)(1)(C). See paragraphs (e) and (f) of this section.

(3) The limitation provided by section 381(c)(1)(B) shall be applied to the aggregate of the allowable net operating loss carryovers of the distributor or transferor corporation without reference to the taxable years in which the net operating losses were sustained by such corporation. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, then the limitation provided by section 381(c)(1)(B) shall be applied to the aggregate of the net operating loss carryovers from all of such distributor or transferor corporations.

(4) If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more different dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of such carryovers shall be governed by the rules prescribed in paragraph (b) of § 1.381(c)(1)-2.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). (i) X Corporation and Y Corporation were organized on January 1, 1955, and make their returns on the calendar year basis. On December 16, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and taxable income (computed without the net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1955	($35,000)	($5,000)
Ending 12/16/56	(30,000)	xxx
1956	xxx	36,500

(ii) The aggregate of the net operating loss carryovers of X Corporation carried under section 381(c)(1)(A) to Y Corporation's taxable year ending December 31, 1956, is $65,000; but pursuant to section 381(c)(1)(B), only $1,500 of such aggregate amount ($36,500 × 15/365) may be used in computing the net operating loss deduction of Y Corporation for such taxable year under section 172(a). This limitation applies even though Y Corporation's own net operating loss carryover to such fiscal year is only $5,000, with the result that Y Corporation has taxable income under section 63 of $28,000 for its taxable year ending December 31, 1956, that is, $36,500 less the sum of $5,000 and $1,500.

(iii) For rules determining the portion of any given loss of X Corporation or Y Corporation which may be carried to a taxable year of Y Corporation following its taxable year ending December 31, 1956, see sections 172(b)(2) and 381(c)(1)(C) and paragraph (f) of this section.

Example (2). (i) X Corporation was organized on January 1, 1954, and Y Corporation was organized on January 1, 1956. Each corporation makes its return on the basis of the calendar year. On December 31, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954	($5,000)	xxx
1955	(15,000)	xxx
1956	(10,000)	$20,000
1957	xxx	40,000

(ii) The aggregate of the net operating loss carryovers of X Corporation carried under section 381(c)(1)(A) to Y Corporation's taxable year 1957 is $30,000, and the full amount of such carryovers is allowed in such taxable year to Y Corporation as a deduction under section 172(a), since such amount does not exceed the limitation ($40,000 × 365/365) for such taxable year under section 381(c)(1)(B).

Example (3). (i) X Corporation, Y Corporation, and Z Corporation were organized on January 1, 1954, and each corporation makes its return on the basis of the calendar year. On September 30, 1956, X Corporation and Y Corporation transferred all their assets to Z Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the three corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (transferor)	Z Corporation (acquirer)
1954	($5,000)	($3,000)	($40,000)
1955	(4,000)	(2,000)	10,000
Ending 9-30-56	(1,000)	(9,000)	xxx
1956	xxx	xxx	73,200

(ii) The aggregate of the net operating loss carryovers of X Corporation and Y Corporation carried under section 381(c)(1)(A) to Z Corporation's taxable year 1956 is $24,000; but, pursuant to section 381(c)(1)(B), only $18,400 of such aggregate amount ($73,200 × 92/366) may be used in computing the net operating loss deduction of Z Corporation for such taxable year under section 172(a). For this purpose, Z Corporation may

not use the total of the aggregate carryovers ($10,000) from X Corporation plus the aggregate carryovers ($14,000) from Y Corporation, even though each such aggregate of carryovers is separately less than the limitation ($18,400) applicable under section 381(c)(1)(B) and this section.

(iii) For rules determining the portion of any given loss of X Corporation, Y Corporation, or Z Corporation which may be carried to a taxable year of Z Corporation following its taxable year ending December 31, 1956, see sections 172(b)(2) and 381(c)(1)(C) and paragraph (f) of this section.

(e) *Computation of carryovers and carrybacks; general rule*—(1) *Sequence for applying losses and computation of taxable income.* The portion of any net operating loss which is carried back or carried over to any taxable year is the excess, if any, of the amount of the loss over the sum of the taxable income for each of the prior taxable years to which the loss may be carried under sections 172(b)(1) and 381. In determining the taxable income for each such prior taxable year for this purpose, the various net operating loss carryovers and carrybacks to such prior taxable year are considered to be applied in reduction of the taxable income in the order of the taxable years in which the net operating losses are sustained, beginning with the loss for the earliest taxable year. The application of this rule to the taxable income of the acquiring corporation for any taxable year ending after the date of distribution or transfer involves the use of carryovers of the distributor or transfer corporation, and of carryovers and carrybacks of the acquiring corporation. In such instance, the sequence for the use of loss years remains the same, and the requirement is to begin with the net operating loss of the earliest taxable year, whether or not it is a loss of the distributor, transferor, or acquiring corporation. The taxable income of the acquiring corporation for any taxable year ending after the date of distribution or transfer shall be determined in the manner prescribed by section 172(b)(2), except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation, the taxable income of such corporation for the taxable year which includes such date shall be computed in the special manner prescribed by section 381(c)(1)(C) and paragraph (f) of this section.

(2) *Loss year of transferor or distributor considered prior taxable year.* Section 381(c)(1)(C) provides that, for the purpose of determining the net operating loss carryovers under section 172(b)(2), a net operating loss for a loss year of a distributor or transferor corporation which ends on or before the last day of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. In a case where the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, the loss years of the distributor or transferor corporations shall be taken into account in the order in which such loss years terminate; if any one of the loss years of a distributor or transferor corporation ends on the same day as the loss year of another distributor or transferor corporation, either loss year may be taken into account before the other.

(3) *Years to which losses may be carried.* The taxable years to which a net operating loss shall be carried back or carried over are prescribed by section 172(b)(1). Since the taxable year of the distributor or transferor corporation ends with the close of the date of distribution or transfer, such taxable year and the first taxable year of the acquiring corporation which ends after that date shall be considered two separate taxable years to which a net operating loss of the distributor or transferor corporation for any taxable year ending before that date may be carried over. This rule applies even though the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer is a period of less than twelve months. However, for the purpose of determining under section 172(b)(1) the taxable years to which a net operating loss of the acquiring corporation is carried over or carried back, the first taxable year of the acquiring corporation which ends after the date of distribution or transfer shall be treated as only one taxable year even though such taxable year is considered under section 381(c)(1)(C) and paragraph (f)(2) of this section as two taxable years. The application of this subparagraph may be illustrated by the following example:

Example. X Corporation was organized on January 1, 1954, and thereafter it sustained net operating losses in its calendar years 1954, 1955, and 1956. On June 30, 1957, X Corporation transferred all its assets to Y Corporation, which was organized on January 1, 1955, in a statutory merger to which section 361 applies. In its taxable year ending June 30, 1957, X Corporation sustained a net operating loss. Y Corporation sustained net operating losses in its calendar years 1955, 1956, and 1958, but had taxable income for the year 1957. The years to which these losses of X Corporation and Y Corporation shall be carried, and the sequence in which carried, are as follows:

Loss year	
X 1954	X 1955, X 1956, X 6/30/57, Y 1957, Y 1958.
X 1955	X 1954, X 1956, X 6/30/57, Y 1957, Y 1958, Y 1959.
Y 1955	Y 1956, Y 1957, Y 1958, Y 1959, Y 1960.
X 1956	X 1954, X 1955, X 6/30/57, Y 1957, Y 1958, Y 1959, Y 1960.
Y 1956	Y 1955, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.
X 6-30-57	X 1955, X 1956, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.
Y 1958	Y 1955, Y 1956, Y 1957, Y 1959, Y 1960, Y 1961, Y 1962, Y 1963.

(4) *Computation of carryovers in a case where the date of distribution or transfer occurs on last day of acquiring corporation's taxable year.* The computation of the net operating loss carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

Example. X Corporation and Y Corporation were organized on January 1, 1955, and each corporation makes its return on the basis of the calendar year. On December 31, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1955	($2,000)	($11,000)
1956	(3,000)	10,000
1957	xxx	(15,000)

The sequence in which the losses of X Corporation and Y Corporation are applied, and the computation of the carryovers to Y Corporation's calendar year 1958, may be illustrated as follows:

(i) *X Corporation's 1955 loss.* The carryover to 1958 is $2,000, computed as follows:

Net operating loss		$2,000
Less:		
X's 1956 taxable income	$0	
Y's 1957 taxable income	0	
	—	0
Carryover		2,000

(ii) *Y Corporation's 1955 loss.* The carryover to 1958 is $1,000, computed as follows:

Net operating loss		$11,000
Less:		
Y's 1956 taxable income	$10,000	
Y's 1957 taxable income	0	
		10,000
Carryover		1,000

(iii) *X Corporation's 1956 loss.* The carryover to 1958 is $3,000, computed as follows:

Net operating loss		$3,000
Less:		
X's 1955 taxable income	$0	
Y's 1957 taxable income	0	
	—	0
Carryover		3,000

(iv) *Y Corporation's 1957 loss.* The carryover to 1958 is $15,000, computed as follows:

Net operating loss		$15,000
Less:		
Y's 1955 taxable income	$0	
Y's 1956 taxable income before net operating loss deduction	$10,000	
Minus Y's 1956 net operating loss deduction (i.e., Y's 1955 carryover)	11,000	
	0	
	—	0
Carryover		15,000

(v) *Summary of carryovers to 1958.* The aggregate of the net operating loss carryovers to 1958 is $21,000, computed as follows:

X's 1955 loss	$ 2,000
Y's 1955 loss	1,000
X's 1956 loss	3,000
Y's 1957 loss	15,000
Total	21,000

(f) *Computation of carryovers and carrybacks when date of distribution or*

transfer is not on last day of acquiring corporation's taxable year—(1) *General rule.* Pursuant to the provisions of section 381(c)(1)(C), the taxable income of the acquiring corporation for its taxable year which is a prior taxable year for purposes of section 172(b)(2) and paragraph (e) of this section shall be determined in the manner prescribed in this paragraph, if the date of distribution or transfer occurs within, but not on the last day of, such taxable year.

(2) *Taxable year considered as two taxable years.* Such taxable year of the acquiring corporation shall be considered as though it were two taxable years, but only for the limited purpose of applying section 172(b)(2). The first of such two taxable years shall be referred to in this section as the preacquisition part year; the second, as the postacquisition part year. For purposes of section 172(b)(2), a net operating loss of the acquiring corporation shall be carried to the preacquisition part year and then to the postacquisition part year, whereas a net operating loss of a distributor or transferor corporation shall be carried to the postacquisition part year and then to the acquiring corporation's subsequent taxable years. In determining under section 172(b)(2) and this paragraph the portion of any net operating loss of a distributor or transferor corporation which is carried to any taxable year of the acquiring corporation ending after the postacquisition part year, the taxable income (as determined under this paragraph) of the postacquisition part year shall be taken into account but the taxable income of the preacquisition part year (as so determined) shall not be taken into account. Though considered as two separate taxable years for purposes of section 172(b)(2), the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which a net operating loss is carried under section 172(b)(1). See paragraph (e)(3) of this section.

(3) *Preacquisition part year.* The preacquisition part year shall begin with the beginning of such taxable year of the acquiring corporation and shall end with the close of the date of distribution or transfer.

(4) *Postacquisition part year.* The postacquisition part year shall begin with the day following the date of distribution or transfer and shall end with the close of such taxable year of the acquiring corporation.

(5) *Division of taxable income.* The taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without any net operating loss deduction) of the acquiring corporation shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation acquires the assets of X Corporation on June 30, 1960, and Y Corporation has taxable income (computed in the manner so prescribed) of $36,600 for its calendar year 1960, then the preacquisition part year taxable income would be $18,200 ($36,600×$\frac{182}{366}$) and the postacquisition part year taxable income would be $18,400 ($36,600×$\frac{184}{366}$).

(6) *Net operating loss deduction.* After obtaining the taxable income of the preacquisition part year and of the postacquisition part year in the manner described in subparagraph (5) of this paragraph, it is necessary to compute the net operating loss deduction for each such part year. This deduction shall be determined in the manner prescribed by section 172(b)(2)(B) but subject to the provisions of this subparagraph. The net operating loss deduction for the preacquisition part year shall, for purposes of section 172(b)(2) only, be determined in the same manner as that prescribed by section 172(b)(2)(B) but shall be computed without taking into account any net operating loss of the distributor or transferor corporation. Therefore, only net operating loss carryovers and carrybacks of the acquiring corporation to the preacquisition part year shall be taken into account in computing the net operating loss deduction for such part year. The net operating loss deduction for the postacquisition part year shall, for purposes of section 172(b)(2) only, be determined in the same manner as that prescribed by section 172(b)(2)(B) and shall be computed by taking into account all the net operating loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer, as well as the net operating loss carryovers and carrybacks of the acquiring corporation to the postacquisition part year. The sequence in which the net operating losses of the two corporations shall be applied for purposes of this subparagraph shall be determined in the manner prescribed in paragraph (e) of this section.

(7) *Limitation on taxable income.* In no case shall the taxable income of the preacquisition part year or the postacquisition part year, as computed under this paragraph, be considered to be less than zero.

(8) *Cross reference.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the determination of the taxable income of the acquiring corporation for such year pursuant to section 381(c)(1)(C) shall be governed by the rules prescribed in paragraph (c) of § 1.381(c)(1)-2.

(9) *Illustration.* The application of this paragraph may be illustrated by the following example:

Example—(i) *Facts.* X Corporation was organized on January 1, 1955, and Y Corporation was organized on January 1, 1954. Each corporation makes its return on the basis of the calendar year. On June 30, 1956, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows, the assumption being made that none of the modifications specified in section 172(b)(2)(A) apply to any taxable year:

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954	xxx	($5,000)
1955	($65,000)	(20,000)
Ending 6-30-56	1,000	xxx
1956	xxx	36,600

(ii) *Y Corporation's 1954 loss.* The carryover to 1957 is $0, computed as follows:

Net operating loss		$5,000
Less:		
Y's 1955 taxable income		0
Carryover to Y's preacquisition part year		5,000
Less:		
Y's preacquisition part year taxable income computed under subparagraph (5) of this paragraph ($36,600×$\frac{182}{366}$)	$18,200	
Minus Y's net operating loss deduction for preacquisition part year	xxx	
		18,200
Carryover to Y's postacquisition part year and also to Y 1957		0

(iii) *X Corporation's 1955 loss.* The carryover to 1957 is $45,600, computed as follows:

Net operating loss		$65,000
Less:		
X's 6/30/56 year taxable income		1,000
Carryover to Y's postacquisition part year		64,000
Less:		
Y's postacquisition part year taxable income computed under subparagraph (5) of this paragraph ($36,600×$\frac{184}{366}$)	$18,400	
Minus Y's net operating loss deduction for postacquisition part year (i.e., Y's 1954 carryover of $0 to such part year)	0	
		18,400
Carryover to Y 1957		45,600

(iv) *Y Corporation's 1955 loss.* The carryover to 1957 is $6,800, computed as follows:

Net operating loss		$20,000
Less:		
Y's 1954 taxable income		0
Carryover to Y's preacquisition part year		20,000
Less:		
Y's preacquisition part year taxable income computed under subparagraph (5) of this paragraph	$18,200	
Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1954 carryover to such part year)	5,000	
		13,200
Carryover to Y's postacquisition part year		6,800

Less:
Y's postacquisition part year taxable income computed under subparagraph (5) of this paragraph ---------- $18,400
Minus Y's net operating loss deduction for postacquisition part year (i.e., Y's 1954 carryover of $0, and X's 1955 carryover of $64,000, to such part year) ------- 64,000
$0

Carryover to Y 1957 ---------- 6,800

(v) *Summary of carryovers to 1957.* The aggregate of the net operating loss carryovers to 1957 is $52,400, determined as follows:

Y's 1954 loss	$0
X's 1955 loss	45,600
Y's 1955 loss	6,800
Total	52,400

(g) *Successive acquiring corporations.* An acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of sections 172 and 381, the net operating loss carryovers available to the first acquiring corporation under sections 172 and 381.

(h) *Illustration.* The application of this section may be further illustrated by the following example:

Example—(1) *Facts.* X Corporation was organized on January 1, 1954, and Y Corporation was organized on January 1, 1955. Each corporation makes its return on the basis of the calendar year. On August 31, 1957, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. The net operating losses and the taxable income of the two corporations for the taxable years involved are set forth in the tabulation below. The taxable income so shown is computed without the modifications required by section 172(b)(2)(A) and without the benefit of any net operating loss deduction. In its calendar year 1957, Y Corporation had a deduction of $365 which is disallowed by section 172(b)(2)(A).

Taxable year	X Corporation (transferor)	Y Corporation (acquirer)
1954	($7,000)	xxx
1955	(10,000)	($10,000)
1956	(25,000)	(15,000)
Ending 8-31-57	1,000	xxx
1957	xxx	54,750
1958	xxx	(5,000)
1959	xxx	50,000

(2) *Computation of carryovers and carrybacks.* The sequence in which the losses of X Corporation and Y Corporation are applied and the computation of the carryovers to Y Corporation's calendar year 1959 may be illustrated as follows:

(i) *X Corporation's 1954 loss.* The carryover to 1958, which is the last year to which this loss may be carried, is $0, computed as follows:

Net operating loss ---------- $7,000
Less:
X's 1955 taxable income -------- $0
X's 1956 taxable income -------- 0
0

Carryover to X's 8/31/57-year 7,000

Less:
X's 8/31/57-year taxable income ---- $1,000
Carryover to Y's postacquisition part year ---------- 6,000
Less:
Y's postacquisition part year taxable income computed under paragraph (f)(5) of this section (($54,750+$365)×122/365) ---------- $18,422
Minus Y's net operating loss deduction for postacquisition part year --- xxx
18,422

Carryover to Y 1958 ---------- 0

(ii) *X Corporation's 1955 loss.* The carryover to 1959 is $0, computed as follows:

Net operating loss ---------- $10,000
Less:
X's 1954 taxable income ------ $0
X's 1956 taxable income ------ 0
0

Carryover to X's 8/31/57-year 10,000

Less:
X's 8/31/57-year taxable income before net operating loss deduction ---- $1,000
Minus X's net operating loss deduction for 8/31/57-year (i.e., X's 1954 carryover) ---------- 7,000
0

Carryover to Y's postacquisition part year ---------- 10,000

Less:
Y's postacquisition part year taxable income computed under paragraph (f)(5) of this section ---------- $18,422
Minus Y's net operating loss deduction for postacquisition part year (i.e., X's 1954 carryover to such part year) ----- 6,000
12,422

Carryover to Y 1958 and Y 1959 ---------- 0

(iii) *Y Corporation's 1955 loss.* The carryover to 1959 is $0, computed as follows:

Net operating loss ---------- $10,000
Less:
Y's 1956 taxable income ---------- 0

Carryover to Y's preacquisition part year ---------- 10,000

Less:
Y's preacquisition part year taxable income computed under paragraph (f)(5) of this section (($54,750+$365)×243/365) -------- $36,693
Minus Y's net operating loss deduction for preacquisition part year -- xxx
36,693

Carryover to Y's postacquisition part year, to Y 1958, and to Y 1959 ---------- 0

(iv) *X Corporation's 1956 loss.* The carryover to 1959 is $22,578, computed as follows:

Net operating loss ---------- $25,000
Less:
X's 1954 taxable income ------ $0
X's 1955 taxable income ------ 0
X's 8/31/57-year taxable income before net operating loss deduction ---------- $1,000
Minus X's net operating loss deduction for 8/31/57-year (i.e., X's 1954 carryover of $7,000 and X's 1955 carryover of $10,000) -$17,000
$0
$0

Carryover to Y's postacquisition part year ---------- 25,000

Less:
Y's postacquisition part year taxable income computed under paragraph (f)(5) of this section ---------- $18,422
Minus Y's net operating loss deduction for postacquisition part year (i.e., X's 1954 carryover of $6,000, X's 1955 carryover of $10,000 and Y's 1955 carryover of $0, to such part year) ----- 16,000
2,422

Carryover to Y 1958 ---------- 22,578

Less:
Y's 1958 taxable income ---------- 0

Carryover to Y 1959 ---------- 22,578

(v) *Y Corporation's 1956 loss.* The carryover to 1959 is $0, computed as follows:

Net operating loss ---------- $15,000
Less:
Y's 1955 taxable income ---------- 0

Carryover to Y's preacquisition part year ---------- 15,000

Less:
Y's preacquisition part year taxable income computed under paragraph (f)(5) of this section ---------- $36,693
Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1955 carryover to such part year) ----- 10,000
26,693

Carryover to Y's postacquisition part year, to Y 1958, and to Y 1959 ---------- 0

(vi) *Y Corporation's 1958 loss.* The carryover to 1959 is $0, computed as follows:

Net operating loss ---------- $5,000
Less:
Y's 1955 taxable income [1] ------ $0
Y's 1956 taxable income ------- 0
0

Carryback to Y's preacquisition part year ---------- 5,000

Less:
Y's preacquisition part year taxable income computed under paragraph (f)(5) of this section --- $36,693
Minus Y's net operating loss deduction for preacquisition part year (i.e., Y's 1955 carryover of $10,000, and Y's 1956 carryover of $15,000, to such part year) --------- 25,000
11,693

Carryback to Y's postacquisition part year and carryover to Y 1959 ---------- 0

[1] Three-year carryback in case of loss years ending after December 31, 1957.

(vii) *Summary of carryovers to 1959.* The aggregate of the net operating loss carryovers to 1959 is $22,578, computed as follows:

X's 1955 loss	$0
Y's 1955 loss	0
X's 1956 loss	22,578
Y's 1956 loss	0
Y's 1958 loss	0
Total	22,578

(3) *Net operating loss deduction for 1957.* (i) The net operating loss deduction available to Y Corporation under section 172(a) for the calendar year 1957, determined in accordance with paragraph (d) of this section, is $48,300, computed as follows:

Aggregate of the net operating loss carryovers available to the transferor corporation as of the close of August 31, 1957, but limited by paragraph (d) of this section to $18,300 (Y's 1957 taxable income of $54,750, computed without any net operating loss deduction, multiplied by 122/365)		
Carryover of X's 1954 loss	$6,000	
Carryover of X's 1955 loss	10,000	
Carryover of X's 1956 loss	25,000	
	41,000	
Aggregate of carryovers, limited as above		$18,300
Carryover of Y's 1955 loss		10,000
Carryover of Y's 1956 loss		15,000
Carryback of Y's 1958 loss		5,000
Net operating loss deduction		48,300

(ii) The taxable income under section 63 for 1957 is $6,450, computed as follows:

Taxable income determined without any net operating loss deduction	$54,750
Less:	
Net operating loss deduction for 1957, as determined under subdivision (i) of this subparagraph	48,300
Taxable income under section 63	6,450

(4) *Net operating loss deduction for 1959.* The taxable income under section 63 for 1959 is $27,422, computed as follows:

Taxable income determined without any net operating loss deduction	$50,000
Less:	
Net operating loss deduction for 1959 (i.e., the aggregate carryovers determined under subparagraph (2)(vii) of this paragraph)	22,578
Taxable income under section 63	27,422

(5) *Years to which losses may be carried.* The taxable years to which the losses of X Corporation and Y Corporation may be carried, and the sequence in which carried, are as follows:

Loss year	*Carried to*
X 1954	X 1955, X 1956, X 8/31/57, Y 1957, Y 1958.
X 1955	X 1954, X 1956, X 8/31/57, Y 1957, Y 1958, Y 1959.
Y 1955	Y 1956, Y 1957, Y 1958, Y 1959, Y 1960.
X 1956	X 1954, X 1955, X 8/31/57, Y 1957, Y 1958, Y 1959, Y 1960.
Y 1956	Y 1955, Y 1957, Y 1958, Y 1959, Y 1960, Y 1961.
Y 1958	Y 1955, Y 1956, Y 1957, Y 1959, Y 1960, Y 1961, Y 1962, Y 1963.

§ 1.381(c)(1)–2 Net operating loss carryovers; two or more dates of distribution or transfer in the taxable year.

(a) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(1)(B) to the aggregate of the net operating loss carryovers to that taxable year from all of the distributor or transferor corporations shall be determined by applying the rules prescribed in paragraph (b) of this section, and the taxable income of the acquiring corporation for that taxable year under sections 381(c)(1)(C) and 172(b)(2) shall be determined by applying the rules prescribed in paragraph (c) of this section. For purposes of this section, the term "postacquisition income" means postacquisition part year taxable income determined under paragraph (d)(1) of § 1.381(c)(1)–1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation.

(b) *Determination of limitation under section 381(c)(1)(B)*—(1) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date of distribution or transfer equals or exceeds the postacquisition income, then the limitation under section 381(c)(1)(B) shall be an amount equal to such postacquisition income. If the amount of the net operating loss carryovers acquired on the first date of distribution or transfer is less than such postacquisition income, then the limitation under section 381(c)(1)(B) shall be determined as provided in subparagraphs (2) through (5) of this paragraph.

(2) *Allocation of postacquisition income among partial postacquisition years.* That part of the taxable year of the acquiring corporation beginning on the day following the first date of distribution or transfer and ending with the close of the taxable year of the acquiring corporation shall be divided into the same number of partial postacquisition years as the number of dates of distribution or transfer on which the acquiring corporation succeeds to net operating loss carryovers during its taxable year. The first partial postacquisition year shall begin with the day following the first date of distribution or transfer and shall end with the close of the second date of distribution or transfer. The second and succeeding partial postacquisition years shall begin with the day following the close of the preceding such partial year and shall end with the close of the succeeding date of distribution or transfer, or, if there is no such succeeding date, then with the close of the taxable year of the acquiring corporation. The postacquisition income of the acquiring corporation shall be allocated among the partial postacquisition years in proportion to the number of days in each such partial year.

(3) *Two dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of two distributor or transferor corporations on two dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date equals or exceeds the income for the first partial postacquisition year, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income. If the income for the first partial postacquisition year exceeds the net operating loss carryovers acquired on the first date of distribution or transfer, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income reduced by the amount of such excess. The application of this subparagraph may be illustrated by the following example:

Example. (i) X Corporation has taxable income (computed without any net operating loss deduction) of $36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of Y and Z Corporations in statutory mergers to each of which section 361 applies, the dates of transfer being January 1 and December 1, respectively. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years	Reduction
Y	$1,000	$33,400 ($36,500 × 334/365)	$32,400
Z	50,000	3,000 ($36,500 × 30/365)	0
	51,000	36,400	32,400

(ii) The limitation provided by section 381(c)(1)(B) equals the postacquisition income of $36,400 reduced by $32,400, the excess of the income for the first partial year ($33,400) over the net operating loss carryovers acquired on the first date of transfer ($1,000). Accordingly, the limitation is $4,000 ($36,400 minus $32,400). Therefore, although X Corporation acquired carryovers aggregating $51,000 during 1955, it can utilize only $4,000 of such carryovers in computing its net operating loss deduction for 1955.

(4) *Three dates of distribution or transfer.* If the acquiring corporation succeeds to the net operating loss carryovers of three distributor or transferor corporations on three dates of distribution or transfer during the same taxable year of the acquiring corporation, and if the amount of the net operating loss carryovers acquired on the first date equals or exceeds the income for the first and second partial postacquisition years, the limitation provided by section 381(c)(1)(B) shall be the amount of the postacquisition income. If the amount of the carryovers acquired on the first date equals or exceeds the income for the first partial postacquisition year but does not equal or exceed the income for the first and second partial postacquisition

years, the limitation shall be the amount of the postacquisition income reduced by the excess of the income for the first and second partial postacquisition years over the amount of carryovers acquired on the first and second dates of distribution or transfer. If the income for the first partial postacquisition year exceeds the carryovers acquired on the first date, the limitation shall be the postacquisition income reduced by the sum of the amount of such excess plus the amount, if any, by which the income for the second partial postacquisition year exceeds the carryovers acquired on the second date. This subparagraph may be illustrated by the following examples:

Example (1). (i) X Corporation has taxable income (computed without any net operating loss deduction) of $36,500 for its calendar year 1955. During 1955, X Corporation acquires the assets of M, N, and Z Corporations in statutory mergers to each of which section 361 applies, the dates of transfer being January 1, January 31, and December 1, respectively. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years		Reduction
M	$4,000	$3,000	($36,500× 30/365)	$23,400
N	6,000	30,400	($36,500×304/365)	
Z	50,000	3,000	($36,500× 30/365)	0
	60,000	36,400		23,400

(ii) Since the carryovers of $4,000 acquired on the first date of transfer exceed the income for the first partial year ($3,000), the limitation provided by section 381(c)(1)(B) is the amount of the postacquisition income ($36,400) reduced by the excess of the income for the first and second partial years ($33,400) over the carryovers acquired on the first and second dates of transfer ($10,000). Therefore, the limitation is $13,000 ($36,400 less $23,400).

Example (2). (i) Assume the same facts as in example (1) except that the amount of the net operating loss carryovers acquired from M Corporation is $1,000. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years		Reduction
M	$1,000	$3,000	($36,500×30/365)	$2,000
N	6,000	30,400	($36,500×304/365)	24,400
Z	50,000	3,000	($36,500×30/365)	0
	57,000	36,400		26,400

(ii) Since the income for the first partial year ($3,000) exceeds the $1,000 of carryovers acquired on the first date by $2,000, the limitation provided by section 381(c)(1)(B) is the postacquisition income of $36,400 reduced by such excess and also reduced by the excess of the income for the second partial year ($30,400) over the carryovers acquired on the second date of transfer ($6,000). Therefore, the limitation is $10,000 ($36,400 less the sum of $2,000 and $24,400).

Example (3). (i) Assume the same facts as in example (2) except that the carryovers acquired from N Corporation are $75,000. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years		Reduction
M	$1,000	$3,000	($36,500× 30/365)	$2,000
N	75,000	30,400	($36,500×304/365)	0
Z	50,000	3,000	($36,500× 30/365)	0
	126,000	36,400		2,000

(ii) Since the income for the first partial year ($3,000) exceeds the $1,000 of carryovers acquired on the first date by $2,000, the limitation provided by section 381(c)(1)(B) is the postacquisition income of $36,400 reduced by $2,000, or $34,400. No further reduction is made since the income for the second partial year ($30,400) does not exceed the carryovers of $75,000 acquired on the second date of transfer.

(5) If the acquiring corporation succeeds to the net operating loss carryovers of four or more distributor or transferor corporations on four or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the limitation provided by section 381(c)(1)(B) shall be determined consistently with the methods prescribed in subparagraphs (3) and (4) of this paragraph. The application of this subparagraph may be illustrated by the following example:

Example. (i) X Corporation has taxable income (computed without any net operating loss deduction) of $36,500 for its calendar year 1955. During 1955, X Corporation acquired the assets of M, N, O, Y, and Z Corporations in statutory mergers to each of which section 361 applied, the dates of transfer being, respectively, January 1, January 31, March 3, April 2, and December 1. The net operating loss carryovers of each transferor corporation and the income for each partial postacquisition year are:

Corporation	Carryovers	Income for partial years		Reduction
M	$1,000	$3,000	($36,500× 30/365)	$2,000
N	4,000	3,100	($36,500× 31/365)	1,100
O	1,000	3,000	($36,500× 30/365)	
Y	10,000	24,300	($36,500×243/365)	14,300
Z	20,000	3,000	($36,500× 30/365)	0
	36,000	36,400		17,400

(ii) The limitation provided by section 381(c)(1)(B) equals the postacquisition income of $36,400 reduced by the sum of (*a*) the $2,000 excess of the income for the first partial year ($3,000) over the carryovers acquired from M Corporation ($1,000), (*b*) the $1,100 excess of the income for the second and third partial years ($6,100) over the carryovers acquired from N and O Corporations ($5,000), and (*c*) the $14,300 excess of the income for the fourth partial year ($24,300) over the carryovers acquired from Y Corporation ($10,000). Accordingly, the limitation is $19,000 ($36,400 minus $17,400). Therefore, although X Corporation acquired carryovers aggregating $36,000 during 1955, it can utilize only $19,000 of such carryovers in computing its net operating loss deduction for 1955.

(c) *Determination of taxable income of acquiring corporation under section 381(c)(1)(C)*—(1) *In general.* If the acquiring corporation succeeds to the net operating loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer within one taxable year of the acquiring corporation, then pursuant to section 381(c)(1)(C) the taxable income of the acquiring corporation for its taxable year which is a prior taxable year for purposes of section 172(b)(2) and paragraph (e) of § 1.381(c)(1)-1 shall be determined as provided in this paragraph.

(2) *Division of taxable income.* The taxable income of the acquiring corporation (computed with the modifications specified in section 172(b)(2)(A) but without any net operating loss deduction) shall be allocated proportionately on a daily basis among a preacquisition part year (determined under paragraph (f)(3) of § 1.381(c)(1)-1 by treating the first date of distribution or transfer as though it were the only date of distribution or transfer during the taxable year of the acquiring corporation) and two or more partial postacquisition years (determined as provided in paragraph (b)(2) of this section). The preacquisition part year and each partial postacquisition year shall be considered a separate taxable year, but only for the limited purpose of applying sections 172(b)(2) and 381(c)(1)(C).

(3) *Net operating loss deduction.* The net operating loss deduction of the preacquisition part year and the partial postacquisition years shall be determined consistently with the manner described in paragraph (f)(6) of § 1.381(c)(1)-1 but by taking into account, in the case of any partial postacquisition year, only the net operating loss carryovers and carrybacks of the acquiring corporation and those net operating loss carryovers from a distributor or transferor corporation which become available to the acquiring corporation as of the close of those dates of distribution or transfer which occur before the beginning of that specific partial postacquisition year. The sequence in which the net operating losses of the distributor or transferor and acquiring corporations shall be applied for this purpose shall be determined in the manner described in paragraph (e) of § 1.381(c)(1)-1. Subject to the preceding sentence, the net operating loss carryovers to any specific partial postacquisition year, whether from a distributor, transferor, or acquiring corporation, shall be taken into account in the order of the taxable years in which the net operating losses arose, beginning with the loss for the earliest taxable year.

(4) *Illustration.* The application of this paragraph may be illustrated by the following example:

Example—(i) *Facts.* X Corporation, which was organized on January 1, 1957, sustained a net operating loss of $20,000 for its calendar year 1957 and had taxable income (computed without any net operating loss deduction) of $36,500 for its calendar year 1958. During 1958, X Corporation acquired the assets of Y and Z Corporations in statutory mergers to each of which section 361 applied, the dates of transfer being June 30 and September 30, respectively. None of the modifications specified in section 172(b)(2)(A) apply to any of the corporations for any taxable year. The taxable income (computed without any net operating loss deduction) and net operating losses of Y and Z Corporations (which were organized on January 1,

1957, and January 1, 1954, respectively) are set forth below:

Taxable year	Acquiring corporation X	Transferor corporation Y	Transferor corporation Z
1954	xxx	xxx	($30,000)
1955	xxx	xxx	1,000
1956	xxx	xxx	1,000
1957	($20,000)	($25,000)	1,000
Ending 6-30-58	xxx	1,000	xxx
Ending 9-30-58	xxx	xxx	1,000
1958	36,500	xxx	xxx

The sequence in which the losses of the acquiring corporation and the transferor corporations are applied and the computation of the carryovers to X Corporation's calendar year 1959 are illustrated in the following subdivisions of this example.

(ii) *Computation of taxable income.* X Corporation's taxable income, determined in the manner described in subparagraph (2) of this paragraph, for the preacquisition part year and for the partial postacquisition years is as follows:

Year	Taxable income	Computation
Preacquisition part year	$18,100	$36,500×181/365
Partial No. 1	9,200	36,500× 92/365
Partial No. 2	9,200	36,500× 92/365

(iii) *Z Corporation's 1954 loss.* The carryover to 1959 is $0, computed as follows:

Net operating loss		$30,000
Less:		
Z's 1955, 1956, 1957, and 9/30/58-year income		4,000
Net operating loss carryover to Partial No. 2 year		26,000
Less:		
Partial No. 2 year taxable income		9,200
		16,800

The balance of $16,800 is not carried over to 1959 since X Corporation's taxable year 1958 is the last of the five years to which Z's 1954 loss may be carried under section 172(b)(1).

(iv) *Y Corporation's 1957 loss.* The carryover to 1959 is $14,800, computed as follows:

Net operating loss		$25,000
Less:		
Y's 6/30/58-year income		1,000
Net operating loss carryover to Partial No. 1 year		24,000
Less:		
Partial No. 1 year taxable income		9,200
Carryover to Partial No. 2 year		14,800
Less:		
X's Partial No. 2 year taxable income	$9,200	
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of $26,000 to such partial year)	26,000	
		0
Carryover to 1959		14,800

(v) *X Corporation's 1957 loss.* The carryover to 1959 is $1,900, computed as follows:

Net operating loss		$20,000
Less:		
X's preacquisition part year taxable income		18,100
Carryover to Partial No. 1 year		1,900
Less:		
Partial No. 1 year taxable income	$9,200	
Minus X's net operating loss deduction for Partial No. 1 year (i.e., Y's 1957 carryover of $24,000 to such partial year)	24,000	
		$0
Carryover to Partial No. 2 year		1,900
Less:		
Partial No. 2 year taxable income	$9,200	
Minus X's net operating loss deduction for Partial No. 2 year (i.e., Z's 1954 carryover of $26,000, and Y's 1957 carryover of $14,800, to such partial year	40,800	
		$0
Carryover to 1959		1,900

(vi) *Summary of carryovers to 1959.* The aggregate of the net operating loss carryovers to 1959 is $16,700, computed as follows:

Z's 1954 loss	xxx
Y's 1957 loss	$14,800
X's 1957 loss	1,900
Total	16,700

[F.R. Doc. 60-832; Filed, Jan. 28, 1960; 8:45 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 59-FW-59]

FEDERAL AIRWAYS AND CONTROL AREAS

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6454 and 601.6454 of the regulations of the Administrator, the substance of which is stated below:

VOR Federal airway No. 454 is a split airway and presently extends in part from Tuskegee, Ala., to McDonough, Ga., with another segment extending in part from Atlanta, Ga., to Athens, Ga. The Federal Aviation Agency has under consideration realigning the segment of Victor 454 between Atlanta and Athens by redesignating it to extend from the McDonough, Ga., VOR to the Athens, Ga., VOR via the intersection of the McDonough VOR 036° and the Athens VOR 241° True radials. This would provide airway continuity on Victor 454 and would provide a bypass airway to the south of the Atlanta terminal area for en route traffic. This is part of a plan to increase air traffic flow capabilities in the Atlanta terminal area by providing a dual airway system for northeast and southwest bound traffic.

If this action is taken, VOR Federal airway No. 454 and associated control areas would be redesignated to extend in part from Tuskegee, Ala., to Athens, Ga., via McDonough, Ga., and the intersection of the McDonough VOR 036° and Athens VOR 241° True radials to Athens.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 22, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-863; Filed, Jan. 28, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 59-WA-370]

FEDERAL AIRWAYS AND CONTROL AREAS

Designation

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6295 and 601.6295 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 295 extends in part from Orlando, Fla., to Vero Beach, Fla. The Federal Aviation Agency has under consideration the designation of an east alternate to Victor 295 from Orlando to Vero Beach via the intersection of the Orlando VOR 099° and the Vero Beach VOR 342° True radials. The designation of Victor 295-E from Orlando to Vero Beach would provide an alternate route for aircraft proceeding to and from Melbourne, Fla., airport and Pat-

rick AFB, Cocoa, Fla., which would bypass the congested traffic conditions on VOR Federal airway No. 159 when aircraft are holding at Preston, Fla., intersection and on Victor 159–E when aircraft are holding at the Orlando ILS outer marker or are making instrument approaches on the Orlando ILS.

If this action is taken, an east alternate to VOR Federal airway No. 295 with associated control areas would be designated from Orlando, Fla., to Vero Beach, Fla., via the intersection of the Orlando VOR 099° and the Vero Beach VOR 342° True radials.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 22, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–864; Filed, Jan. 28, 1960; 8:45 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 59–WA–420]

CODED JET ROUTES

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 602.558 of the regulations of the Administrator, the substance of which is stated below.

VOR/VORTAC jet route No. 58 presently extends in part from Tonopah, Nev., via Pioche, Nev., Milford, Utah, Hanksville, Utah, and Alamosa, Colo., to Amarillo, Tex. The Federal Aviation Agency has under consideration realigning this segment from Tonopah via Bryce Canyon, Utah, Farmington, N. Mex., Las Vegas, N. Mex., to Amarillo, Tex. This would realign aproximately 400 miles of the jet route which is not presently served by radar into an area where radar traffic advisory service is available and would reduce the overall length of the route by approximately 20 miles.

If this action is taken, VOR/VORTAC jet route No. 58 would extend in part from the Tonopah, Nev., VOR via the Bryce Canyon, Utah, VOR; Farmington, N. Mex., VOR; intersection of the Farmington VOR 109° and the Las Vegas, N. Mex., VOR 300° True radials; Las Vegas VOR; to the Amarillo, Tex., VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Airspace Utilization Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 22, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–862; Filed, Jan. 28, 1960; 8:45 a.m.]

[14 CFR Part 608]

[Airspace Docket No. 59–NY–15]

RESTRICTED AREAS

Withdrawal of Proposal To Establish a Restricted Area/Military Climb Corridor

In a notice of proposed rule making published in the FEDERAL REGISTER as Airspace Docket No. 59–NY–15 on December 10, 1959, (24 F.R. 9998), it was proposed to designate a Restricted Area/Military Climb Corridor at Wright-Patterson Air Force Base, Dayton, Ohio. The Federal Aviation Agency has been advised by the Department of Air Force that there is no longer a requirement for a Restricted Area/Military Climb Corridor at Wright-Patterson Air Force Base.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the proposal contained in Airspace Docket No. 59–NY–15 is withdrawn.

Section 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 22, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–865; Filed, Jan. 28, 1960; 8:45 a.m.]

NOTICES

SECURITIES AND EXCHANGE COMMISSION

[File 24FW–1127]

CONTINENTAL MINING AND OIL CORP. AND COMINOL INDUSTRIES, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JANUARY 22, 1960.

I. Continental Mining and Oil Corporation (now Cominol Industries, Inc.) a corporation of Delaware, located at 1500 Massachusetts Avenue NW., Washington, D.C., filed with the Commission on December 9, 1957, a Notification and Offering Circular, relating to an offering of 250,000 shares of its 10 cent par value, common stock, at $1.00 per share, for an aggregate public offering of $250,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to section 3(b) thereof and Regulation A promulgated thereunder; and

II. The Commission has reasonable cause to believe:

A. That no exemption was available under Regulation A for the securities purported to be offered thereunder, that the terms and conditions of the regulation have not been complied with, and that the offering circular and other material used in connection with the offering contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were

made, not misleading, particularly with respect to the following:

1. The statements in the offering circular under "Operating Plan" and "Use of Proceeds" described a proposed mining operation in the State of Arkansas, when, in fact, it appears that a substantial portion of the proceeds were used to acquire a company known as Shielding, Inc. through an intermediary corporation known as Shielding Corporation, in which 49 percent of the stock was owned by certain officers and directors of Cominol Industries, Inc. and certain other persons at little or no cost to them. It further appears that their 49 percent interest in Shielding Corporation was transferred to Cominol in exchange for 130,000 shares of Cominol, together with options to purchase an additional 40,000 shares at $3 per share.

2. The statement in the offering circular that the public offering price was $1.00 per share, and the failure to disclose in the offering circular the method of offering whereby the stock would be offered to the public at higher and undetermined prices by a person or persons purchasing from the principal underwriter with a view to distribution and who in fact did so distribute the stock, and the failure to disclose the profit of such person or persons.

3. The aggregate public offering price of securities sold by the issuer exceeded $300,000 in that the common stock was sold at a price in excess of $1 per share as set forth in the offering circular, and other securities were also being offered and sold in violation of Section 5 of the Securities Act of 1933, as amended, during the period of distribution of the common stock.

4. The failure to use an offering circular as required by Rule 256 in connection with the offering of common stock to the public.

5. The failure to revise the offering circular as required by Rule 256(e) in connection with the offering of securities which was not completed within nine months from the date of the offering circular.

6. The failure to file with the Commission copies of written communications used in connection with the offering and sale of securities as required by Rule 258.

7. The dissemination in connection with the offering of materially misleading information regarding the company, its plans, its properties and the offering of securities.

8. The failure to file a report of sales of the securities sold pursuant to the exemption claimed under Regulation A for the period of six months following the date of the original offering circular, as required by Rule 260.

9. The filing of an incomplete and inaccurate report of sales on Form 2A pursuant to Rule 260 in that the report filed September 26, 1958 states, contrary to fact, that the offering was completed September 25, 1958, that the offering was made at $1.00 per share by the broker-dealer firms named therein, and the report on Form 2A does not reflect the actual commissions paid and received.

10. The statements in the offering circular regarding underwriting discounts and commissions were false and misleading in failing to disclose that approximately 25,000 shares of common stock of Cominol Industries, Inc. were distributed to persons who sold securities on behalf of the issuer and/or the underwriter, E. L. Wolf Associates.

B. The transactions, practices and course of business employed in the offering and sale of the securities of Cominol Industries, Inc. constituted violations of section 17 of the Securities Act of 1933, as amended, in that said transactions, practices and course of business operated as a fraud and deceit upon purchasers, particularly with respect to the following:

1. Cominol Industries, Inc. initially received only 51 percent of the shares of Shielding Corporation (which acquired all the shares of Shielding, Inc.) despite the fact that Cominol paid or became obligated to pay the entire purchase price of the investment in Shielding, Inc. Cominol subsequently acquired the remaining 49 percent interest in Shielding Corporation through the issuance of an additional 130,000 shares of common stock of Cominol to certain officers and directors of Cominol, and certain other persons, who had acquired the Shielding Corporation shares at little or no cost.

2. The distribution to the public of a portion of the common stock at prices in excess of the public offering price as stated in the offering circular, and the resulting profits to persons engaged in the offering and sale.

3. The distribution and sale of other securities of the issuer in violation of section 5 of the Securities Act during the period of distribution of the common stock, the compensation paid to persons who participated in such sale and distribution.

4. The use of an offering circular and the dissemination of other information in connection with the offering, which contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

III. *It is ordered,* Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A of securities of Continental Mining and Oil Corporation pursuant to said notification be, and hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in this matter may file with the Secretary of the Commission a written request for a hearing; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission.

It is further ordered, That this Order and Notice shall be served upon Cominol Industries, Inc., 1500 Massachusetts Avenue NW., Washington, D.C., E. L. Wolf Associates, 1500 Massachusetts Avenue NW., Washington, D.C.; personally or by registered mail or confirmed telegraphic notice, and shall be published in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-873; Filed, Jan. 28, 1960; 8:47 a.m.]

HARTMAN URANIUM & OIL CORP.

[File No. 24D-1708]

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JANUARY 25, 1960.

I. Hartman Uranium & Oil Corporation (issuer), a Utah corporation, 223 Phillips Petroleum Building, Salt Lake City, Utah, filed with the Commission on May 3, 1955, a notification and offering circular relating to an offering of 5,000,000 shares of its 3 cents par value common stock at 3 cents per share for an aggregate of $150,000, and filed various amendments thereto, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A, promulgated thereunder and

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with in that Hartman Uranium & Oil Corporation has failed to file reports of sales on Form 2-A as required by Rule 224, and

III. *It is ordered,* Pursuant to Rule 223(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing; that within twenty days after receipt of request, the Commission will, or at any time upon its own motion, may set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this Order of Suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-874; Filed, Jan. 28, 1960; 8:47 a.m.]

[File No. 24NY-4632]

LYN SWANN AND STERLING NOEL AS "I'LL CALL YOU COMPANY"

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JANUARY 25, 1960.

I. Lyn Swann, Laurel Road, New City, New York, and Sterling Noel, Owings Mills, Maryland, as "I'll Call You Company", c/o Phyllis Anderson Theatre, Second Avenue and Fourth Street, New York, New York, filed with the Commission on February 14, 1958, a notification on Form 1-A and an offering circular relating to an offering of pre-formation limited partnership interests in an aggregate amount of $110,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with, in that:

1. The issuer has made written offers of its securities without giving or sending each person to whom such offer was made an offering circular at the time of such written offer or prior thereto and has sold securities without giving each person to whom the securities were sold an offering circular as required by Rule 256(a).

2. The issuer sent out written communications in connection with the offering without filing such material with the Commission at least five days prior to the use thereof, as required by Rule 258(c).

3. The issuer has failed to file a revised offering circular, as required by Rule 256(e).

B. The notification, the offering circular and sales literature used by the issuer contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The statement in sales literature that the S.E.C. approved of the offering and the offering circular.

2. The statement in sales literature that the proposed play was to be produced on Broadway whereas the offering circular indicated that the play was to be produced off-Broadway.

3. The statements in sales literature that the production was budgeted at $300,000 and that each investor would receive 1 percent of the net profits for each $6,000 invested whereas the offering circular stated that the production was budgeted at $110,000 and that each investor would receive 1 percent of the net profits for each $2,200 invested.

4. The failure to disclose that the proposed general partners could receive one-quarter of one percent of the producers' share of the net profits if he permitted the use of his investment prior to the production.

5. The failure to amend the notification and the offering circular to disclose that Sterling Noel was no longer associated with the offering and the proposed production.

C. The offering would be in violation of section 17 of the Securities Act of 1933, as amended.

III. *It is ordered,* Pursuant to Rule 261(a) of the General Rules and Regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-875; Filed, Jan. 28, 1960; 8:48 a.m.]

[File No. 31-635]

UNION ELECTRIC CO.

Order

JANUARY 22, 1960.

The Commission having on December 21, 1959, issued its Notice of Filing and Notice of and Order for Hearing (Holding Company Act Release No. 14119) with respect to the application of Union Electric Company ("Union") for exemption pursuant to section 3(a)(2) of the Public Utility Holding Company Act of 1935 ("Act") and for release of the jurisdiction heretofore reserved by the Commission concerning the retainability of the gas properties in the Union system; said order having designated January 26, 1960, as the date for public hearing in Washington, D.C., with respect to said application;

J. Raymond Dyer, a stockholder of Union, having requested (1) that he be given leave to intervene as a party or, in the alternative, that he be given leave to be heard, (2) a postponement of the hearing and (3) that the hearing be held in St. Louis, Missouri, rather than Washington, D.C.;

The Commission deeming it appropriate to postpone the hearing until February 10, 1960; and deeming it not appropriate to grant the request that the hearing be held in St. Louis, Missouri;

It is ordered, That the hearing in this matter, previously scheduled for January 26, 1960, be, and it hereby is, postponed to February 10, 1960, at 10:00 a.m., at the Headquarters Office of the Commission in Washington, D.C.

It is further ordered, That the request to hold the hearing in St. Louis, Missouri, be, and it hereby is, denied.

It is further ordered, That the request for leave to intervene as a party or, in the alternative, for leave to be heard, be deferred until the date of the hearing when such matter shall be presented to the hearing officer in accordance with the provisions of Rule XVII of the rules of practice of the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-876; Filed, Jan. 28, 1960; 8:48 a.m.]

DEPARTMENT OF STATE

International Cooperation Administration

AMERICAN MEDICAL CENTER FOR BURMA, INC.

Register of Voluntary Foreign Aid Agencies

JANUARY 19, 1960.

In accordance with the regulations of the International Cooperation Administration concerning Registration of Agencies for Voluntary Foreign Aid (I.C.A. Regulation 3) 22 CFR Part 203, promulgated pursuant to section 521 of the Mutual Security Act of 1954, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the International Cooperation Administration to the following agency:

American Medical Center for Burma, Inc., 3 Penn Center Plaza, Philadelphia 2, Pa.

JAMES W. RIDDLEBERGER, *Director.*

[F.R. Doc. 60-872; Filed, Jan. 28, 1960; 8:47 a.m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. 570, 1959 Revision, Supp. No. 10]

MILLERS NATIONAL INSURANCE CO.

Surety Companies Acceptable on Federal Bonds

JANUARY 25, 1960.

A Certificate of Authority has been issued by the Secretary of the Treasury to the following company under the Act of Congress approved July 30, 1947, 6 U.S.C. secs. 6-13, as an acceptable surety on Federal bonds.

An underwriting limitation of $411,000.00 has been established for the company. Further details as to the extent and localities with respect to which the company is acceptable as surety on Federal bonds will appear in the next revision of Department Circular 570, to be issued as of May 1, 1960. Copies of the circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington 25, D.C.

State in Which Incorporated, Name of Company, and Location of Principal Executive Office
Illinois; Millers National Insurance Company; Chicago, Ill.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F.R. Doc. 60-877; Filed, Jan. 28, 1960; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. 891]

RATES, CHARGES, AND PRACTICES OF CARRIERS ENGAGED IN TRADES BETWEEN THE UNITED STATES AND SPAIN/PORTUGAL

Notice of Investigation, of Hearing, and Prehearing Conference

Correction

In F.R. Document 60-807 appearing in the issue for Wednesday, January 27, 1960, at page 688, insert a bracket that will read as set forth above.

Maritime Administration

[Docket No. S-105]

AMERICAN PRESIDENT LINES, LTD.

Notice of Application and of Hearing

Notice is hereby given of the application of American President Lines, Ltd., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, for the operation or charter (upon time or bareboat terms) of tanker vessels by Signal Oil and Gas Company, an affiliate of American President Lines, Ltd., or by any division or subsidiary of Signal Oil and Gas Company, for the carriage of petroleum products in the domestic intercoastal or coastwise service. This application may be inspected by interested parties in the Office of Government Aid, Maritime Administration.

A hearing on the application has been set for February 16, 1960, at 10:00 a.m., e.s.t., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on February 12, 1960, notify the Secretary, Maritime Administration in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Administration, petitions for leave to intervene received after the close of business on February 12, 1960, will not be granted in this proceeding.

Dated: January 27, 1960.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-929; Filed, Jan. 28, 1960; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Order 2846]

DIRECTOR, GEOLOGICAL SURVEY

Delegation of Authority To Negotiate a Contract for Personal or Professional Services

SECTION 1. *Delegation.* The Director, Geological Survey, is authorized subject to the provisions of section 2 of this order, to exercise the authority delegated by the Administrator of General Services to the Secretary of the Interior (24 F.R. 1921) to negotiate, without advertising under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252 et seq.), a contract for professional services relating to a study of the Geological Survey's laboratory and office facilities presently located in about 20 buildings throughout the Washington area. The purpose of the study would be to improve the Survey's overall housing situation and to provide preliminary information leading to the design of a proposed new facility.

SEC. 2. *Exercise of authority.* The authority delegated by section 1 of this order shall be exercised in accordance with the applicable limitations in the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures and controls prescribed by the General Services Administration and the Department of the Interior. The authority delegated by this order does not include authority to make advance payments under section 305 of the act.

SEC. 3. *Redelegation.* The Director, Geological Survey may, in writing, redelegate or authorize written redelegation of the authority granted in section 1 of this order to a subordinate official or employee. The redelegation of this authority shall be published in the FEDERAL REGISTER.

ELMER F. BENNETT,
Acting Secretary of the Interior.

JANUARY 22, 1960.

[F.R. Doc. 60-869; Filed, Jan. 28, 1960; 8:46 a.m.]

[Order 2847]

DIRECTOR, BUREAU OF LAND MANAGEMENT

Delegation of Authority to Negotiate a Contract for Personal or Professional Services

SECTION 1. *Delegation.* The Director, Bureau of Land Management, is authorized subject to the provisions of section 2 of this order, to exercise the authority delegated by the Administrator of General Services to the Secretary of the Interior (24 F.R. 1921) to negotiate, without advertising, under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252 et seq.), a contract for architectural and engineering services for the design of preliminary plans, final plans, inspection of construction during process, and final inspection of a planned second story addition to the Parachute Loft and Equipment Building, Fire Control Station, Fairbanks, Alaska.

SEC. 2. *Exercise of authority.* The authority delegated by section 1 of this order shall be exercised in accordance with the applicable limitations in the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures and controls prescribed by the General Services Administration and the Department of the Interior. The authority delegated by this order does not include authority to make advance payments under section 305 of the act.

SEC. 3. *Redelegation.* The Director, Bureau of Land Management may, in writing, redelegate or authorize written redelegation of the authority granted in section 1 of this order to a subordinate official or employee. The redelegation of this authority shall be published in the FEDERAL REGISTER.

FRED A. SEATON,
Secretary of the Interior.

JANUARY 22, 1960.

[F.R. Doc. 60-870; Filed, Jan. 28, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—JANUARY

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during January. Proposed rules, as opposed to final actions, are identified as such.